

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FLOYD K.,¹
Plaintiff,

v.

KILOLO KIJAKAZI,
Defendant.

Case No. [20-cv-07774-SK](#)

**ORDER REGARDING CROSS-
MOTIONS FOR SUMMARY
JUDGMENT**

Regarding Docket Nos. 17, 20

This matter comes before the Court upon consideration of Plaintiff Floyd K.'s motion for summary judgment and the cross-motion for summary judgment filed by Defendant, the Commissioner of Social Security (the "Commissioner"). Pursuant to Civil Local Rule 16-5, the motions have been submitted on the papers without oral argument. Having carefully considered the administrative record, the parties' papers, and relevant legal authority, and the record in the case, the Court hereby GRANTS Plaintiff's motion and DENIES the Commissioner's cross-motion for summary judgment for the reasons set forth below. The Court REMANDS this matter for further proceedings.

BACKGROUND

On February 12, 2018, Plaintiff filed an application for a period of disability and disability insurance benefits, alleging he was disabled starting on September 1, 2017. (Administrative Record ("AR") 15.) On February 12, 2018, Plaintiff also filed a claim for supplemental social security income. (*Id.*) Plaintiff alleged that he was disabled based on his post-traumatic stress disorder, depression, high blood pressure, illiteracy, and anti-social behavior/anger flare ups. (AR

¹ Plaintiff's name is partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

78.) Plaintiff was born on September 28, 1965, and was 51 years old, which is defined as an individual closely approaching advanced age, on his alleged disability onset date. (AR 31.)

On December 16, 2019, Plaintiff, accompanied by counsel, testified at a hearing before the Administrative Law Judge (“ALJ”). (AR 15.) Plaintiff and vocational expert Jose L. Chaparro both testified at the hearing. (*Id.*)

The ALJ found that Plaintiff had the following severe impairments: asthma, chronic kidney disease, essential hypertension, degenerative disc disease of the spine, dysthymic disorder, major depressive disorder, post-traumatic stress disorder, stimulant use disorder, and mild to moderate intellectual disability. (AR 18.) The ALJ further found that Plaintiff did not have an impairment, or a combination of impairments, that meets or medically equals a listed impairment. (*Id.*)

The ALJ determined that Plaintiff had the residual functional capacity (“RFC”) to perform medium work, except that he must avoid concentrated use of hazardous machinery and concentrated exposure to unprotected heights. (AR 26.) The ALJ also found that Plaintiff has the following non-exertional limitations: he is limited to work that is simple, routine, and repetitive tasks; limited to low-stress work, which is defined as jobs requiring no more than occasional decision-making and no more than occasional changes in the workplace setting; he could have no interaction with the general public; and he could have only occasional interaction with co-workers. (AR 26.) The ALJ found that Plaintiff could not perform his past work with these limitations but that, based on the testimony of the vocational expert, Plaintiff could perform the requirements of a Kitchen Helper (DOT 318.687-010), a Laboratory Equipment Cleaner (DOT 381.687-022), and a Hand Packager (DOT 920.587-018). (AR 32-33.) Therefore, the ALJ determined that Plaintiff was not disabled. (AR 33.)

ANALYSIS

A. Standard of Review.

A federal district court may not disturb the Commissioner’s final decision unless it is based on legal error or the findings of fact are not supported by substantial evidence. 42 U.S.C. § 405(g); *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998). “Substantial evidence means more than a mere scintilla, but less than a preponderance; it is such relevant evidence as a reasonable

mind might accept as adequate to support a conclusion.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). To determine whether substantial evidence exists, courts must look at the record as a whole, considering both evidence that supports and undermines the findings by the Administrative Law Judge (“ALJ”). *Reddick*, 157 F.3d at 720. The ALJ’s decision must be upheld, however, if the evidence is susceptible to more than one reasonable interpretation. *Id.* at 720-21.

B. Legal Standard for Establishing a Prima Facie Case for Disability.

Disability is “the inability to engage in any substantial gainful activity” because of a medical impairment which can result in death or “which has lasted or can be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). To determine whether a plaintiff is disabled, an ALJ applies a five-step sequential evaluation process. *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987); 20 C.F.R. § 404.1520. The plaintiff bears the burden of establishing a *prima facie* case for disability in the first four steps of evaluation. *Gallant v. Heckler*, 753 F.2d 1450, 1452 (9th Cir. 1984). However, the burden shifts to the Commissioner at step five. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999).

The five-step analysis proceeds as follows. First, the claimant must not be engaged in substantial gainful activity. 20 C.F.R. § 416.920(b). Second, the claimant must have a “severe” impairment. 20 C.F.R. § 416.920(c). To be considered severe, a medical impairment must significantly limit physical or mental ability to do basic work activities and must be of twelve months duration or be expected to last for at least twelve months. (*Id.*) Third, if the claimant’s impairment meets or equals one of the impairments listed in Appendix I to the regulation (a list of impairments presumed severe enough to preclude work), benefits are awarded without consideration of the claimant’s age, education, or work experience. 20 C.F.R. § 20 C.F.R. 404.1520(d). Fourth, if the claimant’s impairments do not meet or equal a listed impairment, the ALJ will assess and make a finding about the claimant’s residual functional capacity (“RFC”) based on all relevant medical and other evidence in the claimant’s case record. 20 C.F.R. § 416.920(e). The RFC measurement describes the most an individual can do despite his or her limitations. *Id.* § 404.1545(a)(1). If the claimant has the RFC to perform past relevant work,

benefits will be denied. *See id.* § 404.1520(f). If the claimant cannot perform past relevant work, the ALJ will proceed to step five. *Id.*

At step five, the ALJ determines whether the claimant can make an adjustment to other work. 20 C.F.R. § 404.1520(f)(1). If the claimant can make the adjustment to other work, the ALJ will find the claimant is not disabled; if the claimant cannot make an adjustment to other work, the ALJ will find that the claimant is disabled. *Id.* at 404.1520(e) and (g). There are two ways to make this determination: (1) by the testimony of an impartial vocational expert or by reference to the Medical-Vocational Guidelines at 20 C.F.R. pt. 404, subpt. P, app.2. *Id.*

C. Weighing Medical Evidence.

For benefits applications filed after March 27, 2017, such as Plaintiff's here, the Social Security Administration's ("SSA") regulations and several Social Security Rulings regarding the evaluation of medical evidence have been amended. Prior to the current regulations, Ninth Circuit law held that an ALJ must provide clear and convincing reasons to reject a treating or examining physician's uncontradicted opinion and must provide specific and legitimate reasons to reject a treating or examining physician's contradicted opinion. *See Trevizo v. Berryhill*, 871 F.3d 664, 675 (9th Cir. 2017) (citations omitted). However, under the current regulations, "the Commissioner 'will no longer give any specific evidentiary weight to medical opinions; this includes giving controlling weight to any medical opinion.'" *V.W. v. Comm'r of Soc. Sec.*, 2020 WL 1505716, at *13 (N.D. Cal. Mar. 30, 2020) (quoting 20 C.F.R. § 416.920c(a)); *see also P.H. v. Saul*, 2021 WL 965330, at *3 (N.D. Cal. Mar. 15, 2021) (citation omitted) (noting that the 2017 regulations eliminate the deference given to treating physicians for claims filed after March 27, 2017). Some district courts have continued to apply the "clear and convincing" and "specific and legitimate" standards as a "benchmark against which the Court evaluates [the ALJ's] reasoning." *See, e.g., Kathleen G. v. Comm'r of Soc. Sec.*, 2020 WL 6581012, at *3 (W.D. Wash. Nov. 10, 2020). Others, including courts in this district, have not. *See, e.g., V.W.*, 2020 WL 1505716, at *13; *Agans v. Saul*, 2021 WL 1388610, at *7 (E.D. Cal. Apr. 13, 2021).

Plaintiff appears to argue that the Court should still apply the standards adopted by the Ninth Circuit which provide weight to medical opinions depending in part on whether they are

1 offered by treating, examining, or non-examining (reviewing) professionals. *See, e.g., Ryan v.*
 2 *Commissioner of Social Security*, 528 F.3d 1194, 1198 (9th Cir. 2008). However, regulatory
 3 agencies such as the SSA have broad authority to interpret the statutes they are charged with
 4 applying, as long as their regulations are not arbitrary and capricious or contrary to the statute, and
 5 courts must defer to validly adopted regulatory interpretations. *Chevron, U.S.A., Inc. v. Nat. Res.*
 6 *Def. Council, Inc.*, 467 U.S. 837 (1984); *see also Barnhart v. Walton*, 535 U.S. 212, 222 (2002)
 7 (granting deference under *Chevron* to SSA interpretation of duration requirement for disability
 8 benefits.) Because agencies are experts in the field, an agency’s contrary interpretation will
 9 supersede a prior judicial construction unless the “prior court decision holds that its construction
 10 follows from the unambiguous terms of the statute and thus leaves no room for agency discretion.”
 11 *Nat’l Cable & Telecommunications Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 982 (2005).

12 The Ninth Circuit’s determination of the treating physician rule, and the corollary weight it
 13 attributed to treating, examining, or non-examining medical providers was not derived from the
 14 unambiguous terms of the statute. *See Agans*, 2021 WL 1388610, at *6 (describing the source and
 15 evolution of the treating physician rule). “The treating physician rule . . . was originally developed
 16 by Courts of Appeals as a means to control disability determinations by administrative law judges
 17 under the Social Security Act.” *Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 829
 18 (2003). When the SSA later adopted regulations approving and formalizing use of the rule in the
 19 Social Security disability program, the agency noted that “[n]one of the circuit courts of appeals
 20 has held that its treating physician rule is required by the Act or Constitution.” *See* Final Rules,
 21 Standards for Consultative Examinations and Existing Medical Evidence, 56 FR 36932-01 (1991).
 22 Therefore, the SSA’s new regulations regarding the examination of and weight given to medical
 23 providers supersedes the Ninth Circuit’s treating physician rule. The Court will address the ALJ’s
 24 evaluation of the medical opinions in accordance with the new regulations.

25 Under the current regulations, the Commissioner must evaluate the persuasiveness of all
 26 medical opinions based on: (1) supportability; (2) consistency; (3) relationship with the claimant;
 27 (4) specialization; and (5) other factors, such as “evidence showing a medical source has
 28 familiarity with the other evidence in the claim or an understanding of our disability program’s

1 policies and evidentiary requirements.” 20 C.F.R. § 416.920c(a), (c)(1)-(5). “The two ‘most
2 important factors for determining the persuasiveness of medical opinions are consistency and
3 supportability,’ which are the ‘same factors’ that ‘form the foundation of the current treating
4 source rule.’” *V.W.*, 2020 WL 1505716 at *13 (quoting Revisions to Rules, 82 Fed. Reg. 5844-01
5 at 5853). With respect to “supportability,” the new regulations provide that “[t]he more relevant
6 the objective medical evidence and supporting explanations presented by a medical source are to
7 support his or her medical opinion(s) or prior administrative medical finding(s), the more
8 persuasive the medical opinions or prior administrative medical finding(s) will be.” 20 C.F.R. §
9 416.920c(c)(1). The regulations provide that with respect to “consistency,” “[t]he more consistent
10 a medical opinion(s) or prior administrative medical finding(s) is with the evidence from other
11 medical sources and nonmedical sources in the claim, the more persuasive the medical opinion(s)
12 or prior administrative medical finding(s) will be.” 20 C.F.R. § 416.920c(c)(2).

13 Explanation of the consideration of the other factors is optional, except in cases where two
14 or more opinions are equally well-supported and consistent with the record. *Id.* While the new
15 Social Security “regulations eliminate the ‘physician hierarchy,’ deference to specific medical
16 opinions, and assigning ‘weight’ to a medical opinion, the ALJ must still ‘articulate how [he/she]
17 considered the medical opinions’ and ‘how persuasive [he/she] find[s] all of the medical
18 opinions.’” *Christopher Charles A. v. Comm’r of Soc. Sec.*, 2020 WL 916181, at *2 (W.D. Wash.
19 Feb. 26, 2020) (citing 20 C.F.R. §§ 404.1520c(a) and (b) (1), 416.920c(a) and (b) (1)).

20 Here, Plaintiff was examined by two psychologists – Aparna Dixit, Psy.D. and Laura Jean
21 Catlin, Psy.D. Plaintiff argues that the ALJ erred in crediting the opinions of Dixit over Catlin.

22 **1. Dixit.**

23 Dixit examined Plaintiff on July 1, 2019, on referral from the California Department of
24 Social Services, to assist with determining Plaintiff’s disability status. (AR 516.) Dixit clinically
25 interviewed Plaintiff, performed a mental status examination, reviewed the available medical
26 records, and administered the Weschsler Adult Intelligence Scale-IV (“WAIS-IV”), the Weschler
27 Memory Scale (“WMS-IV”), and the Trail Making Test (“TMT”) A and B. (AR 516.) Dixit
28 considered Plaintiff a reliable historian. (AR 516.) Plaintiff reported to Dixit that he is not

1 currently receiving psychotherapy/counseling, has never been psychiatrically hospitalized, never
2 attempted suicide, and has never been prescribed psychiatric medications. (AR 517.) In terms of
3 activities of daily living, Plaintiff reported being able to provide for his own grooming and
4 hygiene, perform household chores such as washing dishes, laundry and taking out the garbage, go
5 grocery shopping, drive, use public transportation, make simple microwave meals, and attend
6 appointments. (AR 517.)

7 Dixit observed that Plaintiff was mildly disheveled with somewhat compromised hygiene
8 and grooming, had adequate eye contact and was able to complete his history form. (AR 517.)

9 Dixit noted that Plaintiff was cooperative and pleasant and no overt signs of psychomotor
10 retardation or agitation, his speech was spontaneous and clear and did not have any word finding
11 difficulty. (AR 517.) Dixit also noted that Plaintiff did not have any signs of a formal thought
12 disorder – Plaintiff’s thought process was linear and goal orientated, his thought content was
13 logical, he had no signs of hallucinations or delusions, no evidence of thought blocking, thought
14 stopping, or response latency, and no current suicidal or homicidal ideation. (AR 517.) Plaintiff’s
15 mood was dysthymic with full range of affect and commensurate with his mood. (AR 517.)

16 Dixit found that Plaintiff was alert and orientated to time, place, purpose, and person, and
17 assessed his working and short-term memory as intact. (AR 517.) Dixit further observed that
18 Plaintiff was able to perform some simple mathematical problems, do serial threes, and was able
19 to recite five digits forward and backward, he was able to follow a three-step command, able to
20 spell the word “forget” forward and backward, and was able to do serial 7s correctly, and that his
21 ability to think abstractly was unimpaired. Plaintiff also demonstrated fair insight, was able to
22 give a good account of his strengths and deficits, and demonstrated adequate social judgment.
23 (AR 518.)

24 On the WAIS-IV test, Plaintiff scored 76 in verbal comprehension, 81 in perceptual
25 reasoning, 80 in working memory, and 81 in processing speed, and his full-scale IQ was 75. On
26 the WMS-IV his auditory memory was 91 and his visual working memory was 88. On the TMT,
27 Plaintiff took 41 seconds with zero errors on part A and took 101 seconds with zero errors on Part
28 B. Dixit explained that Plaintiff’s verbal comprehension and full scale IQ fell within the

1 borderline impaired range and that his perceptual reasoning, working memory, and processing
2 speed fell within the low average range. (AR 518.) On the WMS-IV, Plaintiff's auditory memory
3 fell with the average range and his visual working memory fell within the low average range,
4 which suggested intact auditory and mildly compromised visual working memory functioning.
5 (AR 519.) On the TMT, Plaintiff's scores suggested mild impairment with sequencing, organizing
6 and mental flexibility. (AR 519.) Dixit opined that these tests were valid because of Plaintiff's
7 current cognitive functioning. (AR 518.)

8 Dixit concluded that Plaintiff did not have any symptoms of a thought disorder, did not
9 exhibit any cognitive deficits upon examination, but did present with some symptoms suggesting a
10 mood disorder. Dixit opined that Plaintiff would benefit from continued psychiatric treatment.
11 (AR 519.) Based on reviewing Plaintiff's records, the mental status exam, cognitive testing, and
12 clinical interview, Dixit found that Plaintiff would have no significant difficulty remembering and
13 following simple instructions and his ability to retain and follow complex and detailed instructions
14 appeared impaired. Dixit further opined that Plaintiff's ability to work with the public and to
15 perform tasks requiring mental flexibility was mildly impaired, but his ability to work with
16 supervisors and co-workers, to maintain persistence and pace over two-hour increments was not
17 impaired. (AR 519.) Dixit noted that Plaintiff was able to sustain attention with no difficulty
18 during the evaluation and that he retains the cognition to be able to manage funds independently.
19 (AR 519.)

20 **2. Catlin.**

21 On November 4, 2019, Catlin examined Plaintiff. Similar to Dixit, Catlin reviewed
22 Plaintiff's records, performed a mental status examination, conducted a clinical interview, and
23 performed the WAIS-IV. (AR 533.) Catlin did not perform the WMS-IV or the TMT, but did
24 conduct the Repeatable Battery for the Assessment of Neuropsychological Status ("RBANS"),
25 BDI Beck Depression Inventory, and the Burns PTSD Inventory. (AR 533.)

26 Catlin noted that Plaintiff approached her in a friendly and cooperative manner, was
27 responsive to her, and appeared to be a credible historian. (AR 533.) Plaintiff reported that he has
28 some difficulties performing his activities of daily living, including doing most of his household

1 chores and with hygiene and basic self-care activities because he is homeless. He also reported that
2 he has difficulty dealing with people he does not know and maintaining his friendships because of
3 his depression and that he has severe difficulty concentrating and remembering to do important
4 things without reminders. (AR 534.) He reported that he did not have any history of psychiatric
5 hospitalization or outpatient psychotherapy. (AR 535.) Plaintiff also reported that he wakes up
6 one to two hours early and cannot go back to sleep, does not have much energy to do much, and
7 has more difficulty concentrating than he used to, but that he has not had any changes in his
8 appetite. (AR 536.).

9 Catlin observed that Plaintiff's arousal level during the interview was within normal limits,
10 his response time was average and he appeared alert and orientated. Plaintiff was engaged in the
11 evaluation and was able to sustain his attention. (AR 535.) Catlin noted that Plaintiff was
12 adequately groomed and appropriately dressed, walked with an adequate gait, sat with an adequate
13 posture, and did not have any difficulty maintaining appropriate eye contact. (AR 535-36.)
14 Plaintiff was talkative and animated when speaking. He was tense, but was polite, open, earnest
15 and forthright. Catlin further observed that Plaintiff's motor activity was normal in amount.
16 Plaintiff's mood was depressed and anxious and his affect was within normal limits and was
17 congruent with his mood. (AR 536.) Plaintiff did not report any suicidal thoughts or intent and
18 did not have any hallucinations and delusions. Plaintiff's thought process was goal orientated and
19 logical, but his thought content evinced some preservation on negative thinking and paranoia.
20 (AR 536.) Catlin found that Plaintiff's insight and judgment were limited. (AR 536.)

21 On the RBANS, which is a brief neurocognitive battery, which measures immediate and
22 delayed memory, attention, language, and visuospatial skills, Plaintiff scored in the severely
23 impaired range. (AR 536.) She found that his immediate memory, delayed memory,
24 visuospatial/constructional, semantic fluency and picture naming, attention were all were severely
25 impaired. (AR 536-37.) On the Beck Depression inventory, Plaintiff reported feelings which
26 indicated severe depression. (AR 537-38.)

27 Catlin diagnosed Plaintiff with severe major depressive disorder, PTSD, complex
28 bereavement, and mild to moderate intellectual disability. (AR 538.) On the WAIS-IV test,

Plaintiff scored 54 in verbal comprehension, 63 in perceptual reasoning, 50 in working memory, and 50 in processing speed, and his full-scale IQ was 48, which were all in the extremely low range. (AR 539.) Catlin opined that Plaintiff had indications of a mild intellectual disability and noted that he has difficulty with reasoning, problem solving, planning, abstract thinking, judgment, academic learning, learning from experience, and understanding and following directions. (AR 539.) She noted that Plaintiff has adaptive deficit limits with communication, social participation, and independent living. (AR 539.)

Catlin opined that Plaintiff was mildly impaired in his ability to adhere to basis standards of neatness and cleanliness, was extremely impaired in his ability to understand, remember, and carry out detailed instructions, and was markedly impaired in his ability to: (1) understand and remember short and simple work-like procedures; (2) carry out short and simple instructions; (3) maintain adequate pace and persistence to perform simple tasks; (4) maintain his attention for two-hour segments; (5) maintain regular attendance and be punctual within customary, usually strict tolerances; (6) work in coordination with or in proximity to others without being unduly distracted; (7) make simple work-related decisions; (8) complete a normal workday and workweek without interruption from psychologically based symptoms; (9) maintain an adequate pace and persistence while performing complex/detailed tasks; (10) perform at a consistent pace without an unreasonable number and length of rest periods; (11) be able to ask simple questions or request assistance; (12) interact appropriately with the general public; (13) adapt to changes in job routine; (14) withstand the stress of a routine workday; (15) accept instruction and responding appropriately to criticism from supervisors; (16) get along with co-workers or peers without unduly distracting them or exhibiting behavioral extremes; (17) interact appropriately with co-workers, supervisors, and public on a regular basis; (18) be aware of normal hazards and taking appropriate precautions; (19) travel to unfamiliar places; and (20) use public transportation. (AR 540-42.) Catlin further opined that Plaintiff's impairments would cause him to be absent from work more than four days a month. (AR 542.)

3. ALJ's Assessment.

In evaluating these two examining psychologist's findings and opinions, the ALJ gave

great weight to Dixit's opinions and rejected Catlin's opinions. The ALJ found Dixit's opinions persuasive because they were rendered after an in-person examination which documented some abnormal findings with many normal findings. (AR 20.) Dixit's opinions were also supported by standardized testing, which revealed some cognitive difficulty but no severe limitations. (*Id.*) The ALJ further noted that Dixit's opinions were consistent with the longitudinal medical evidence in the record, which documented normal mental status findings and no evidence of cognitive dysfunction. (AR 20.) Plaintiff's reported activity level and independence in performing his activities of daily living also supported Dixit's opinions. (AR 20.)

Catlin examined Plaintiff in person and conducted standardized tests as well, but the tests revealed very different results. Although conducted only four months later, Plaintiff's full scale IQ score on the WAIS-IV was 48, 27 points lower than his previous score. His verbal comprehension score was 54, which was 22 points lower, and his working memory index was 50, which was 30 points lower. (AR 21.) These scores placed Plaintiff in the extremely low range of cognitive ability. (*Id.*) The results from the RBANS also placed Plaintiff in the severely impaired range, and the BDS test were interpreted as demonstrating severe depression. (*Id.*) The ALJ discounted Catlin's opinions finding Plaintiff markedly impaired in nearly all aspects of mental functioning and predicting that he would miss more than four days of work per month. (AR 21.) The ALJ found that Catlin relied primarily on the subjective reporting by Plaintiff as to the severity of his symptoms. (AR 22.) Plaintiff takes issue with the ALJ's use of the word "primarily," but there is no doubt that Catlin did consider Plaintiff's subjective reporting and that Plaintiff reported more severe symptoms to Catlin than he had reported to Dixit four months earlier. While both Dixit and Catlin found Plaintiff to be a credible historian, as discussed below, the ALJ determined that Plaintiff's testimony regarding his symptoms was not credible.² Therefore, the ALJ was justified in discounting Catlin's opinions to the extent she relied on Plaintiff's reported severe symptoms.

² The ALJ further discounted Catlin's opinions because they were rendered following a single examination of Plaintiff. However, as Plaintiff notes, Dixit's opinions were also rendered after a single examination.

1 The ALJ further noted that Catlin’s opinions conflicted with her own findings on
2 Plaintiff’s mental status examination, which documented many normal findings. (AR 22.)
3 Plaintiff argues that the ALJ improperly ignored the abnormal findings, but the ALJ did not
4 characterize *all* of Catlin’s findings as normal. Instead, the ALJ noted that her findings that
5 Plaintiff was friendly, cooperative, responsive, a credible historian, alert, orientated, engaged, able
6 to sustain attention, logical and goal-orientated in his thought processes, and had appropriate eye
7 contact conflicted with Catlin’s opinions that has marked impairments in nearly all aspects of his
8 mental functioning. (AR 22.) The ALJ’s reasoning is supported by substantial evidence in the
9 record. The ALJ further found that Catlin’s test results showing “extremely low” cognitive
10 abilities, verbal comprehension, perceptual reasoning abilities, and full scale IQ were also
11 internally inconsistent with her opinion that Plaintiff had no more than a mild to moderate
12 intellectual disability. (AR 22.)

13 The ALJ also noted that Catlin’s opinions were inconsistent with the other longitudinal
14 medical evidence of record, which documents general normal metal status examination findings
15 and do not reflect any evidence of significant cognitive difficulties. (AR 22 (citing AR 305-306
16 (Plaintiff was orientated to person, place, and time, with normal mood and affect and normal
17 behavior), 309 (same), 321 (Plaintiff denied fatigue and denied depression), 322 (neurological and
18 psychiatric exam findings that Plaintiff was orientated to person, place and time with normal
19 speech and affect), 442-43 (Plaintiff was orientated to person, place, and time, with normal mood
20 and affect and normal behavior), 497 (Plaintiff reported no depression, no sleep disturbances, and
21 no fatigue; exhibited good judgment, normal mood and affect, was active and alert, and his recent
22 and remote memory was normal), 525 (normal affect, speech, and comprehension), 526 (noting
23 Plaintiff can take public transportation), 566 (Plaintiff was alert and orientated), 577 (Plaintiff was
24 orientated to person, place and time and was not in distress), 586 (Plaintiff was orientated to
25 person, place, and time, with normal mood and affect and normal behavior), 598 (same), 606-07
26 (Plaintiff was orientated to person, place, and time, with normal mood and affect and was not in
27 distress), 614 (Plaintiff was calm and cooperative), 627 (Plaintiff was orientated to person, place,
28 and time, with normal mood and affect), 637 (Plaintiff was alert and orientated to person, place,

1 and time, with normal mood and affect and normal behavior), 647-48 (Plaintiff was alert and
2 orientated to person, place, and time, with normal mood and affect). Plaintiff accuses the ALJ of
3 inaccurately describing Plaintiff's medical records but fails to cite to a single medical record
4 which contradicts these above cited medical records or otherwise supports Catlin's findings other
5 than her own report. (Dkt. No. 17 at p. 10.)

6 The ALJ further notes that Catlin's opinions and test results were inconsistent with
7 Plaintiff's hearing testimony and his own reporting on his function report. (AR 22.) Contrary to
8 Catlin's finding of Plaintiff's severely impaired memory and cognitive impairments, Plaintiff did
9 not demonstrate any difficulty remembering and recounting his impairments or work history.
10 Additionally, the ALJ noted that Plaintiff's Function Report did not indicate that Plaintiff needed
11 any assistance reading or completing the form. (AR 22.)

12 However, Plaintiff asserts a challenge to Dixit's opinions that the ALJ failed to address –
13 that the examination was too short to conduct the tests Dixit states were performed. According to
14 Plaintiff's testimony at the hearing, his appointment with Dixit lasted only thirty minutes. (AR
15 65.) Plaintiff testified as follows:

16 Q. How long did that appointment last?

17 A. Is that, that's the doctor or the –

18 Q. This was the mental health appointment.

19 A. Oh that last –

20 Q. Not the physical doctor.

21 A. – oh that one lasted for like thirty minutes.

22 Q. The one –

23 A. The mental, the mental health –

24 Q. – the mental health one –

25 A. Yeah.

26 Q. Lasted for thirty minutes. And do you remember, did she
27 just ask you questions, did she administer any tests?

28 A. She just asked a lotta different questions.

(AR 65 – 66.)

25 Plaintiff argues that administering the WAIS-IV would take between 67 and 100 minutes
26 and that administering the Wechsler Memory Scale would take 75 to 77 minutes. (Dkt. No. 17 at
27 p. 9.) Although the testimony at the hearing is ambiguous about which mental health appointment
28 to which Plaintiff refers, Plaintiff makes a serious allegation in his motion for summary judgment

1 that Dixit falsely represented that she had administered tests to Plaintiff.

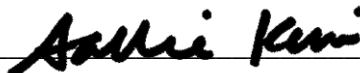
2 The ALJ did not address that issue at all. The ALJ has a duty “to fully and fairly develop
3 the record and to assure that the claimant’s interests are considered.” *Smolen v. Chater*, 80 F.3d
4 1273, 1288 (9th Cir. 1996) (internal quotation and citation omitted). The ALJ’s duty to develop
5 the record arises the evidence is ambiguous or inadequate. *Id.* The ALJ has this duty “to assure
6 that the claimant’s interests are considered.” *Id.* (internal quotation omitted). This duty exists
7 even where the claimant is represented by counsel. *Id.* The duty to develop the record is
8 heightened when the claimant suffers from mental illness and may not be able to protect his own
9 interests. *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001) (citing *Higbee v. Sullivan*,
10 975 F.2d 558, 562 (9th Cir. 1992)). Due to the ambiguity regarding the length of Dixit’s
11 examination and what tests Dixit conducted, the Court finds it appropriate to remand to further
12 develop the record on this limited issue. In light of the Court’s remand, the Court will not address
13 Plaintiff’s remaining arguments regarding his testimony and the ALJ’s RFC determination
14 because those issues are related to the ALJ’s assessment of Dixit’s and Catlin’s opinions.

15 CONCLUSION

16 For the foregoing reasons, the Court GRANTS Plaintiff’s motion for summary judgment
17 and DENIES the Commissioner’s cross-motion for summary judgment. The Court vacates the
18 Commissioner’s final decision and REMANDS for further administrative proceedings consistent
19 with this order. The Court shall issue a separate judgment, and the Clerk shall close this file.

20 **IT IS SO ORDERED.**

21 Dated: February 24, 2022

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23 SALLIE KIM
24 United States Magistrate Judge
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